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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR CHERYL HARSKOWITCH
DIRECTOR, TAXPAYER ACCOUNT OPERATIONS
C:TAO

FROM: Carol A. Campbell *CA*
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CC:NTA

SUBJECT: Suspension of the Statutes of Limitations Under Section 7811(d)

This memorandum addresses the issue of the scope and requirements of section 7811(d) of the Internal Revenue Code regarding taxpayer assistance orders ("TAOs") and the suspension of the running of periods of limitation. This memorandum is provided in response to your request for clarification as to whether the statute is permissive or mandatory and whether cases involving very limited time periods are necessarily subject to the same suspension rules.

Generally, section 7811(d) provides for the suspension of the running of certain periods of limitation when an application for a TAO with respect to actions described in section 7811(b) is filed with the National Taxpayer Advocate ("NTA") or her designee.¹ The suspension period begins when the application is filed and ends when the NTA makes a decision regarding the TAO request. See Treasury Regulation § 301.7811-1(e). Because this suspension is provided for by statute and the language of the statute is

¹ Specifically, section 7811(d) provides that:

The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for --

(1) the period beginning on the date of the taxpayer's application under subsection (a), and ending on the date of the National Taxpayer Advocate's decision with respect to such application, and

(2) any period specified by the National Taxpayer Advocate in a Taxpayer Assistance Order issued pursuant to such application.

I.R.C. § 7811(d).

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framed in mandatory terms, rather than directory terms, upon the filing of an application for a TAO with the Taxpayer Advocate Service ("TAS"), we believe the affected limitations periods are suspended. Suspension of the applicable periods of limitation is intended to protect the interests of the Government while the problems/issues of the taxpayer are being addressed by the TAS. See In re Gore, 182 B.R. 293, 304-305 (Bankr. N.D. Ala. 1995) (all suspension provisions are designed to avoid prejudice to the IRS' ability to collect during periods of time in which collection or assessment is prohibited by law, or made difficult by acts of the debtor or external influences, or time periods during which collection or assessment might hinder the resolution of disputes.)

We recognize that an argument could be made that because section 7811(d) protects the Service and does not provide an obvious benefit to the taxpayer, the requirements of this provision of the statute are not mandatory. In some instances, statutory language that is mandatory in form ("shall"), is often construed as directory or permissive where the statute provides administrative guidance to an agency rather than preventing injury to the taxpayer or the taxpaying public. See 3 Singer, Sutherland Statutory Construction § 57.20 (5th ed. 1992). The suspension of the periods of limitation related to actions described in section 7811(b), is an imposition of specific restrictions on the Service's actions. Periods of limitation are intended to provide some finality for taxpayers (as is evidenced by the IRS Restructuring and Reform Act 98 restrictions imposed on voluntary waiver of the assessment and collection limitations periods) and provides parameters for enforcing rights or determining when certain actions can be taken. The suspension of the limitations periods related to actions under section 7811(b) is not merely administrative guidance. This suspension impacts provisions granting substantive rights to the Service and shielding taxpayers from overreaching by the government. Thus, we are not prepared to conclude that the statutory requirements of section 7811(d) are directory only.

As is readily discernible from the fact that section 7811(d) became effective on January 1, 1989, and its implementing regulations effective within three months of statutory enactment (regulations providing specific guidance and direction regarding statutory suspension), protecting the Service's ability to collect or assess liabilities that have been the subject of TAO requests has not been a predominant concern, since there has been little movement toward developing procedures to ensure that the applicable statutes are protected. This could be because the time period between the filing of an application for a TAO and the date of decision has been of fairly limited duration, or a reluctance by the TAS (and the former Problem Resolution Program) to extend periods of limitation that generally work in favor of the Service rather than the taxpayer, or a

recognition that a filed TAO request does not automatically preclude assessment or collection of liabilities.² See White v. Commissioner of Internal Revenue, 899 F. Supp. 767, 773 (D. Mass. 1995) (an application merely suspends the running of the period of limitations on collection, it does not immediately suspend the collection action itself).³ With this prior history, why is it important that the TAS input suspensions of applicable limitations periods?

Why should TAS input suspension codes.

The Internal Revenue Code requires the suspension of the running of limitations periods with respect to actions under section 7811(b).

And, while it is true that in most instances, the failure to suspend the applicable statutes of limitations on TAO cases provides no harm to the taxpayer, it is also true that the failure to systemically implement the suspension periods means that the Service loses its ability to rely on the suspension. If the purpose of the statutory provision was to protect the interests of the Government while an application for assistance is being considered, the failure to suspend the limitations periods nullifies that intent. The lack of attention or focus upon the failure to suspend the running of applicable limitations periods to date does not mean that this issue will not get closer scrutiny in the future. Since the TAS is a separate function within the Service, decisions made by the TAS have the ability to impact the operation of other functions or divisions in a manner not previously considered because of the former reporting structures. The new organizational structure changes accountability parameters.

When the TAS does not input a suspension on a case and the Service is precluded from taking an action because of the filing of an application for assistance, the period provided by statute for completion of specific actions is reduced. The TAS has in effect modified downward the periods for collection or assessment that were determined by Congress. The failure to input these suspensions impacts the functioning of other functions of the Service and not just the TAS. Prior to the standup of the TAS, a decision not to suspend a statute was a decision by the Service, a post-standup decision not to suspend the statute is a decision for the Service and this is not authority that has been granted to the TAS.

² IRM procedures provide for the suspension of enforcement actions until a decision is made on a TAO request, but this is a matter of internal policy and procedure rather than a statutory requirement. See IRM 13.1.7.5.3.

³ In cases where enforcement action is not suspended, the suspension of the collection limitations period during the consideration of an application for a TAO could result in the Service having more than 10 years to collect the liability. As this would be a rare occurrence, it is not likely that this possibility was considered by the drafters of section 7811(d).

Limitations periods suspended by a TAO application

Section 7811(d) provides for the suspension of any period of limitations relating to an action described in section 7811(b). The actions identified in section 7811(b) generally relate to the assessment or collection of tax. Treasury Regulation § 301.7811-1(e) states that in general the limitations period for any action that is the subject of a TAO shall be suspended. The regulation does not specifically address the part of the statutory provision requiring the action to be one described in section 7811(b). Without addressing action under section 7811(b), it could be inferred from the regulation that the filing of an application for a TAO results in the suspension of the applicable period of limitation for *any* action included therein. We do not believe that the regulatory provision should be interpreted this broadly. Such an interpretation would be inconsistent with the statutory language and inconsistent with the examples provided in the regulation, which specifically link suspension periods to actions described in section 7811(b) of the statute.

Therefore, a filed application for a TAO will suspend the running of limitations periods for assessment or collection of tax under IRC §§ 6501 and 6502, because the failure to suspend the running of these periods of limitations could potentially prejudice the interests of the Service. A filed application for a TAO will not however, suspend the period of limitations for filing refund claims. If the intent of section 7811(d) is to provide protection to the Service while a taxpayer's issue/problem is being addressed, failing to suspend the limitations period in section 6511(b) does not injure or prejudice the interests of the Service. The interests of the taxpayer can be protected by filing a protective claim for refund.

Computing the suspension period

Section 301.7811-1(e) of the Treasury Regulations provides that the suspension period will begin on the date the written application for a TAO is received and will end on the date a determination is made with respect to the application and for any additional period specified in the TAO. The date the determination is made on the application is *not* the same as the case closing date. The date a decision is made on the application is the date the TAO is issued, the date the TAO is denied (or the date review is completed by the party or parties capable of rescinding or modifying an appealed TAO), or the date an agreement is reached with the involved function as to what should be done with the assistance request.

The question was also raised as to whether a rule can be established providing that the time between application and decision be more than a certain number of days before the TAS would be required to input a suspension. The examples in section 301.7811-1(e)(3) would seem to preclude application of such a rule. The suspension periods provided in

the examples are of very short duration (5 and 7 days), suggesting that it was expected that the time between the filing of the application and the date of decision would not be significant.

For periods of limitation already suspended at the time an application for a TAO is received and that remain suspended throughout the period that a decision is being made with respect to the TAO (e.g., taxpayer's involved in open bankruptcy proceedings), the Service's interest are being protected, the intent of the statute is being met, and thus, there is no reason to "tack" additional days on to an existing suspension.

Applicable periods, written requests, and affected taxpayers

The suspended periods of limitation are those to which the application for the TAO relate or the periods specifically identified in the terms of a TAO. The TAS cannot suspend all collection or assessment limitation periods involving the taxpayer - only the periods related to the relief being requested in the application for the assistance order.

Section 301.7811-1(e)(4) also provides that a written application for relief by the taxpayer or the taxpayer's representative is required in order to suspend the applicable limitations periods. This means that the TAS has no ability to suspend limitations periods on cases where an application has not been filed by the taxpayer or his/her representative. It may be the TAS procedure to fill out Form 911 in any case where assistance is requested by the taxpayer, but in order for the suspension provision to apply, the TAO request must be signed by the taxpayer or an authorized representative.

In addition, the suspension of the limitations period is effective only for the taxpayer filing the application for a TAO. For example, if you have a married taxpayer with a joint liability filing an application for assistance and the taxpayer's spouse is not a party to the request, the applicable suspension period only applies to the requesting taxpayer.

If you have questions or need additional information, please advise.